



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

IDD 6888
6-22-12
Sbc

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-127

JUN 22 2012

Certified Mail Number 7011 2970 0000 0876 4408
Return Receipt Requested

James Cagle, Risk Manager - EHS
Nu-West Industries, Inc.
Agrium Conda Phosphate Operations
3010 Conda Road
Soda Springs, Idaho 83276

Re: NOTICE OF NONCOMPLIANCE
Nu-West Industries - Conda Phosphate Operations Facility;
Administrative Order on Consent, RCRA Section 3013, EPA Docket No. RCRA-10-2009-0186

Dear Mr. Cagle:

This Notice of Noncompliance is to inform Nu-West Industries (Nu-West) of its failure to comply with the Administrative Order on Consent (AOC) issued pursuant to the Resource Conservation and Recovery Act, as amended (RCRA), Section 3013, EPA Docket No. RCRA-10-2009-0186.

Paragraph 66 of the AOC requires Nu-West to submit a work plan for additional work within 30 days of receipt of EPA's determination that additional work is necessary. By letter dated May 11, 2011, EPA specified additional work requirements. Nu-West submitted a draft work plan to carry out the additional work requirements, and after several revisions to the draft plan, EPA approved the work plan by letter dated July 13, 2011.

FILE COPY

Section 5.1.2 of the approved work plan specifies requirements for flow meter logging at the Mountain Fuel well and states the following:

Flow meter data will be acquired at approximately 10-foot depth intervals under both non-pumping and pumping conditions over the saturated portion of the perforated interval using either an HPF or EMF. The non-pumping flow meter test will be recorded first to measure any ambient flow, followed by logging under pumping conditions. Given the large well diameter, a diverter assembly (HPF) or packer (EMF) will be employed to properly focus the flow around the meter at each measurement interval.

The logging contractor added neither a diverter assembly nor a packer during the flow meter tests at the Mountain Fuel well.

Section 5.1.2 of the approved work plan also states the following:

Additional flow meter tests will be recorded at higher pumping rates following the procedure outlined above, until achieving a rate that allows for groundwater inflow to the well under both passive and a range of pumping stresses.

Additional flow meter tests were not performed.

Section 5.1.1 of the approved work plan specifies requirements for flow meter testing at monitoring wells A-9A, A-10, A-11, A-12, MWA, MWB, and MW05-1 through MW05-5 and states the following:

Preliminary field results of the flow meter testing and initial recommendations for discrete interval groundwater sampling (see Section 5.2.1) will be provided to EPA within 7 calendar days after the completion of the field activities. The final results of flow meter logging and final recommendations for the discrete interval sampling activities will be provided to EPA within 20 calendar days of completion of logging activities. The 20 day evaluation period includes approximately 14 calendar days for the subcontractor to complete the final logging reports, which are necessary to provide a complete analysis of the data.

Section 5.2.1 of the approved work plan specifies the requirements for discrete interval sampling at monitoring wells A-9A, A-10, A-11, A-12, MWA, MWB, and MW05-1 through MW05-5 and states the following:

If indicated by the results of the flow meter study, depth-discrete groundwater samples will be collected from the transmissive flow zones within the monitoring well screen interval using a straddle packer-type system. The system will consist of a slotted or perforated sample collection interval bounded above and below by inflatable packers. A pump capable of extracting groundwater from the sample interval at depths of up to approximately 260 feet bgs will be installed within the packer assembly. Hydraulic head within the isolated interval will be monitored during pumping using a pressure transducer.

Low flow purging and sampling techniques consistent with procedures described in WSP SOP #3b and the USEPA low-flow sampling guidance (Puls and Barcelona 1996) will be used to guide the collection of groundwater samples. After setting the straddle-packer assembly at the desired depth interval, groundwater will be purged from the packer interval at a flow rate between 0.1 and 5 liters per minute (l/min).

Nu-West provided the Heat Pulse Flow Meter Testing Report, dated September 9, 2011, to EPA. EPA and Nu-West participated in conference calls on September 15 and 22, 2011, and agreed on pumping rates, zones for discrete interval sampling, and packer configurations, which were confirmed by letter dated, September 27, 2011, from Nu-West. EPA approved of these pumping rates, zones for discrete interval sampling, and packer configurations by letter dated September 29, 2011. Paragraph 129 of the AOC allows for modifications to work plans upon written agreement of the project coordinators.

Nu-West provided the Discrete Interval Groundwater Sampling Report, dated January 18, 2012, to EPA. Table 1 of the report indicates that the "Actual Pumping Rate" column reports values for nearly all of the wells far below the rates recommended by Nu-West and approved by EPA. The rates agreed to during conference calls on September 15 and 22, 2011 were based on the rates identified as necessary to

overcome natural flow between horizons or within the well bore. With the exception of wells MW05-2 and MW05-5, the wells were not pumped at the rates agreed to by the EPA and Nu-West Project Coordinators. Additionally, no packers were deployed in monitoring wells A-10, MWA, MWB, MW05-1, MW05-2, or MW05-3.

EPA was not informed of any technical challenges encountered until months later, upon receipt of the Discrete Interval Groundwater Sampling Report.

Paragraph 64 of the AOC states that, "Upon receipt of EPA approval of the Work Plan, Respondent shall implement the EPA-approved Work Plan in accordance with the terms and schedules contained therein."

Unless there has been a written modification agreed to by EPA, or excusable delay as defined in Section XVIII, Force Majeure, Nu-West is obligated to comply with the requirements of the work plan.

EPA did not receive any requests from Nu-West to modify the paragraph 5.1.1 and 5.2.1 requirements of the approved work plan nor timely notice of a Force Majeure event.

On June 8, 2012, EPA received word that borehole drilling work was in progress at location A-27.

Paragraph 67 of the AOC states that, "All work performed by the Respondent pursuant to this Consent Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Consent Order."

Nu-West did not submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors prior to commencing work on or about June 7, 2012.

Paragraph 90 of the AOC states that, "Unless otherwise agreed to by EPA, Respondent shall notify EPA and IDEQ in writing and by electronic mail, at least ten (10) days in advance of engaging in any field activities at the Facility conducted pursuant to this Consent Order."

Nu-West notified neither EPA nor IDEQ in writing or by electronic mail at least ten (10) days in advance of Nu-West engaging in the field activities that commenced on or about June 7, 2012.

Required Action

The above failures to comply with AOC and work plan requirements may subject Nu-West to enforcement action under paragraph 101 of the AOC, including the assessment of penalties. Within ten (10) days of receipt of this notice, the EPA requests that you submit a written response that identifies actions you have taken or will take to address the noncompliance. If you seek relief from work plan requirements you must provide support for such a request. Work plan requirements remain in force until complied with or modified. As indicated above, modifications to work plans may be made pursuant to Paragraph 129 of the AOC by written agreement of the EPA and Nu-West Project Coordinators.

Please send all material submitted in response to this Notice of Noncompliance to:

Peter Magolske
U.S. Environmental Protection Agency
Air-RCRA Compliance Unit, OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

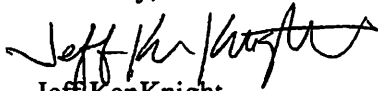
EPA Reservation of Rights

Notwithstanding this letter or your response, EPA reserves the right to take any action pursuant to RCRA or any other applicable legal authority. Your response to this letter does not constitute compliance with RCRA.

Nothing in this letter or your response shall affect duties, obligations, or responsibilities with respect to Nu-West under local, state, or federal law or regulation.

Thank you for your prompt attention to this important matter. If you have questions regarding this letter, please contact Peter Magolske of my staff at 206-553-2994 or by mail at the above address. Questions from legal counsel should be directed to Andrew Boyd in the Office of Regional Counsel at 206-553-1222.

Sincerely,



Jeff KenKnight

Air / RCRA Program Enforcement Manager

cc: Brian Monson, Idaho Department of Environmental Quality
P. Scott Burton, Esq. Hunton and Williams LLP